

ORIGINAL

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October 22, 1998

VIA HAND DELIVERY

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OCT 22 1998

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notification of Ex Parte Presentations; CC Docket No. 96-98;
CCB/CPD No. 97-30; CC Docket Nos. 98-79; 98-103; 98-161; 98-168**

Dear Ms. Salas:

On behalf of e.spire Communications, Inc. ("e.spire"), please take notice that on Monday, October 19, 1998, Riley Murphy of e.spire, and Brad Mutschelknaus of Kelly Drye & Warren LLP, met with Tom Power of Chairman Kennard's office and Kyle Dixon of Commissioner Powell's office to discuss e.spire's views regarding the issue of reciprocal compensation for local calls to Internet service providers ("ISPs"). Ms. Murphy and Mr. Mutschelknaus met with Jim Casserly of Commissioner Ness's office on Tuesday, October 20, 1998 regarding the same topic, and, on Wednesday, October 21, 1998, Ms. Murphy and Mr. Mutschelknaus, joined by John Heitmann of Kelley Drye Warren LLP, met with Kevin Martin of Commissioner Furchtgott-Roth's office and Paul Gallant of Commissioner Tristani's office, also regarding the same topic.

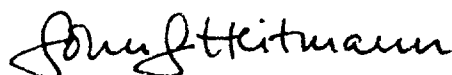
The discussion covered various items on the attached chart which was distributed at the meeting. In particular, the conversation focused heavily on e.spire's view that the Commission's action in the above-captioned dockets should not effect existing interconnection agreements concerning dial-up calls to ISPs terminated on e.spire's network.

KELLEY DRYE & WARREN LLP

Magalie R. Salas, Secretary
October 22, 1998
Page Two

Because e.spire's *ex parte* presentation may effect the merits and outcome of each of the above-referenced dockets, pursuant to Section 1.1206(b)(1) of the Commission's rules, e.spire submits an original and two (2) copies of this *ex parte* notification for inclusion in the record of each of those proceedings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Heitmann". The signature is fluid and cursive, with the first name "John" and last name "Heitmann" clearly distinguishable.

John J. Heitmann, Esq.

cc: Tom Power
Kyle Dixon
Jim Casserly
Kevin Martin
Paul Gallant

Ex Parte Presentation of
e.spire Communications, Inc.
re DSL Tariff Filings

Riley Murphy
Executive Vice President, e.spire
Brad Mutschelknaus
Kelley Drye & Warren
October 19, 1998

Interstate DSL Tariffs Are a Pretext to Avoid ILEC Reciprocal Compensation Obligations

- States and Courts Have Ruled Uniformly that Dial-Up Calls to ISPs Are “Local” Traffic
 - 22 state PUCs
 - 3 courts
- Calling to ISPs Is Not “Exchange Access” Since ISPs Are Not Telecommunications Carriers
- ILEC Strategy Is to Misuse a DSL Tariff Decision to Overturn Those Decisions
 - Letter from Senators Burns and Brownback
 - USTA radio issue advertising

Dial-Up Traffic to ISPs Is Fundamentally Different Than DSL Access

- Dial-Up Calls Are Routed and Paid for Pursuant to Local Exchange Tariffs
 - “Two calls”: a local exchange access call and the interstate information service
 - FCC has specifically permitted ISPs to order service under local exchange tariffs
- DSL Is a Dedicated Service
- FCC Can Permit ILEC DSL Tariffs to be Filed at the Federal Level Without Reversing Position on the Jurisdictional Treatment of Dial-Up Traffic

ILECs Want the FCC to Re-Write Existing Agreements Negotiated by CLECs in Good Faith

- Before Existing Interconnection Agreements Were Negotiated, the FCC Ruled that ISPs Could Receive Access Calls Pursuant to Local Exchange Tariffs
- ILECs Chose Not to Exempt ISP Access Calls in Negotiating Existing Agreements
- ILECs Established the Applicable Reciprocal Compensation Rates
- Since ISPs Are Exempt from Access Charges, the Parties Could Not Possibly Have Intended that No Compensation Should Apply
- CLECs Completed ISP Access Calls Routed to Them by ILECs in Good Faith, but ILECs Now Seek to Free-Ride on Their Networks

A Federal Bail-Out of ILECs Would Be Fundamentally Unfair to CLECs

- CLECs Already Have Completed the Calls Routed to Them by ILECs for Termination
- CLECs Incurred Demonstrable and Substantial Costs in Performing Their End of the Bargain
- If FCC Allows ILECs to Escape Their Contract Commitments, No Other Means Exist for Obtaining Compensation for Services Already Rendered

The Ameritech Proposal Is Unlawful

- The Ex Parte Ameritech Proposal for ISP Traffic Compensation Is Not Cost-Based
 - Tied to the sharing of phantom revenue
 - Ignores the cost of transport and termination as established in state PUC cost dockets
- The Ameritech Proposal Is Complex and Unworkable
 - Requires CLECs to rely on ILEC self-reporting of attributable revenue
 - Revenue sharing calculations are infeasible

Recommended Actions

- Expressly State in DSL Tariff Order(s) that:
 - The FCC is not ruling that dial-up calls to ISPs are interstate calls, or that they are not properly treated as local traffic under existing interconnection agreements
 - The FCC is not reversing position on previous orders concerning the ISP access charge exemption and the permissibility of ISPs ordering service under local exchange tariffs
 - The FCC is not preempting any state PUC or judicial decisions concerning reciprocal compensation for completing calls to ISPs
 - DSL services may be tariffed at the interstate level, but are not exchange access services

Recommended Action

- Consider Long-Term Solutions in the Access Charge Reform Docket
 - ISP access charge exemption
 - Appropriate compensation arrangements

Ex Parte Presentation of
e.spire Communications, Inc.
re DSL Tariff Filings

Riley Murphy
Executive Vice President, e.spire
Brad Mutschelknaus
Kelley Drye & Warren
October 20, 1998

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Riley Murphy
Executive Vice President, e.spire
Brad Mutschelknaus
Kelley Drye & Warren
October 21, 1998

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